

IN THE CLAIMS

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C,  
5. (Amended) A mouthguard of generally "C-shaped" configuration so as to provide a front portion and two arms rearwardly from the front portion, the mouthguard being of a "U-shaped" transverse cross-section so as to provide an inner and an outer flange joined by a base, wherein said base has an upper surface, with the forward portion thereof being raised relative to arm portions thereof so as to provide a raised **incisal** portion.

6. (Amended) A mouthguard of generally "C-shaped" configuration so as to provide a front portion and two arms diverging rearwardly from the front portion, the mouthguard being of a "U-shaped" transverse cross-section so as to provide an inner and an outer flange joined by a base, wherein the mouthguard includes a body of a "C-shaped" configuration, with said arms having end extremities, said mouthguard further including a labial shield embedded in said front portion and extending therefrom through the arms to adjacent extremities thereof so as to provide shield portions in each arm, said body and shield being formed of plastics material, with said shield being more rigid than said body.

REMARKS

Careful consideration has been given to the Official Action of September 10, 2002 and reconsideration of the application as amended is respectfully requested.

The Examiner has allowed Claims 9-11 and 14-17. The Examiner also indicates the allowability of Claims 18 and 25-33.

The indication of allowable subject matter in the application is noted with appreciation. However, it is believed that the rejected claims are entitled to reconsideration

and allowance for the reasons given hereafter.

The Examiner has rejected Claim 1 under 35 USC 102 as being anticipated by Adell (5406963). Claim 1 specifically requires the mouthguard to have an inner flange joined to the base, with the base having a lower surface providing a lower **occusual** table which is generally perpendicular to the inner flange.

The inclination of the inner flange of the Adell mouthguard is best seen in Figure 5. As is clearly evident from this cross-section, the inner flange is inclined by an angle of between 30° and 45° to the lower surface of the base. It is therefore clearly not "generally perpendicular" to the inner flange as required by Claim 1.

The citation does not describe the inclination of the inner flange relative to the lower surface of the base (occusual table) and more particularly does not describe any particular inclination in respect thereof. Accordingly, this reference directs the reader via Figure 5 to have the inner flange inclined to the lower surface of the base by an angle between 30° and 45°. It clearly teaches away from the inner flange being "generally normal" to the occusual table. Reconsideration is respectfully requested.

Claims 3 and 8 were rejected by the Examiner under 35 USC 102(b) as being anticipated by Kittelsen.

Claim 3 requires the mouthguard to have an outer flange provided with a thickened portion across the front that acts as a labial shield. This is best seen in Figure 2 which clearly illustrates the labial shield 23. It can also be seen in cross-section in Figure 3.

In contrast to the above, Kittelsen has a front flange 90 that is constant in transverse cross-section from which there rearwardly extends a series of projections 92 (see Figure 2). It therefore, fails to have a labial shield as defined in Claim 1. More particularly Kittelsen has no labial shield at all. It therefore clearly falls short of an anticipation.

Claim 4 relates to the outer flange of the rearwardly extending arms. The feature is clearly described at pag 3 where it states "Each arm 12 is also provided with a ridge 22 which acts as a shield". The shields (ridges) are identified by the reference numeral 22 in Figures 3, 5 and 6. However, it is best seen in the end view of Figure 2 where the ridges 22 can be seen as projecting downwardly from the base of the mouthguard adjacent the outer flange.

The rearwardly extending arms of Kittelsen have generally planar lower faces, as best seen in Figure 1. There is no downwardly extending ridge to act as a shield. It therefore, fails to have the lower surface of the base provided with a shield adjacent to the outer flange as required by Claim 4. Accordingly, Kittelsen falls short of an anticipation.

Claim 5 requires the mouthguard to have a base between the inner and outer flanges, the base having an upper surface that is raised adjacent the forward portion of the mouthguard relative to the upper surface of the vase in the rearwardly extending arms. To draw particular attention to this feature, Claim 5 is now amended so that this raised part of the upper surface of the base is defined as providing "a raised incisal portion".

In Kittelsen the upper surface of the base is not described or illustrated in any detail. It fails to disclose the base as having, at the forward portion of the upper surface of the base, a "raised **inclusal** portion". It therefore, falls short of an anticipation.

Claim 6 defines the mouthguard as having embedded in the body of the mouthguard a labial shield that extends from the front of the mouthguard through to adjacent the extremity of each arm. It further defines the shield as being formed of plastics material that is more rigid than the body of the mouthguard.

Kittelsen has an anterior impact brace 90 that is only located in the forward portion of the mouthguard. This brace 90 does not extend into the arms and therefore does not extend to adjacent the extremities of the arms.

To more clearly distinguish this claim from Kittelsen, Claim 6 has been amended so that the shield is defined as providing "shield portions in each arm".

The rearwardly extending portions 80 of Kittelsen are not shields and therefore do not anticipate the shield portions in the arms as defined in Claim 6.

Since Claim 6 is not anticipated, Claim 7 and 8 appended thereto are similarly not anticipated.

Claims 19 to 24 and 34 to 37 were rejected by the Examiner under 35 USC 103(a) in view of Adell and Kittelsen.

Claims 19 to 24 are all ultimately dependent on Claim 1. Since Adell and Kittelsen both failed to disclose the use of the lower surface of the base having an occusual table which is generally perpendicular to the inner flange, a combination of the references must also fail. Adell has an inner flange inclined by approximately 30° to 45° to the lower surface of the

base. Kittelsen suggests a similar inclination (see Figure 5).

Claims 34 to 37 are also ultimately dependent on Claim 1 and therefore are distinguished from a combination of Adell and Kittelsen for the above described reasons.

By reason of the above action and comments it is respectfully submitted that all the claims remaining in the application are in allowable condition and favorable reconsideration is earnestly solicited.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Julian H. Cohen', is written over a horizontal line.

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6. (Amended)            A mouthguard of generally "C-shaped" configuration so as to provide a front portion and two arms diverging rearwardly from the front portion, the mouthguard being of a "U-shaped" transverse cross-section so as to provide an inner and an outer flange joined by a base, wherein the mouthguard includes a body of a "C-shaped" configuration, with said arms having end extremities, said mouthguard further including a labial shield embedded in said front portion and extending therefrom through the arms to adjacent extremities thereof so as to provide shield portions in each arm, said body and shield being formed of plastics material, with said shield being more rigid than said body.